Supreme Court, U.S.
FILED

961489 MAR 18 1997

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1996

JACKIE VANCE,

Petitioner,

vs.

HOWARD PETERS, III, Director,
JANE E. HIGGINS, Warden, and
JAMES ROY, Correctional Officer,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

DAVID B. MONTGOMERY
McDERMOTT, WILL & EMERY
227 West Monroe Street
Chicago, Illinois 60606
(312) 372-2000

Attorney for Petitioner Jackie Vance

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

49PP

QUESTION PRESENTED FOR REVIEW

I. Whether the lower courts' grant and affirmance of summary judgment in favor of Howard Peters, Director of Corrections, and Jane Higgins, Warden of Dwight Correctional Center, was inappropriate because genuine issues of material fact exist regarding their knowledge of Petitioner Vance's denial of medical treatment and their intent to impose cruel and unusual punishment upon Petitioner Vance.

TABLE OF CONTENTS

Page

PETITION FOR WRIT OF CERTIORARI..... 1

OPINION BELOW..... 1

JURISDICTION..... 1

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED IN THIS CASE 2

STATEMENT OF THE CASE..... 3

REASON FOR GRANTING THE PETITION 4

SUMMARY JUDGMENT IS INAPPROPRIATE BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST..... 4

CONCLUSION 10

TABLE OF AUTHORITIES

Page

CASES

Aldridge v. Montgomery, 753 F.2d 970 (11th Cir. 1985) 6

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) ...4, 5

Brown v. Hughes, 894 F.2d 1533 (11th Cir. 1990) 5

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 8

Conrad v. Delta Airlines, Inc., 494 F.2d 914 (7th Cir. 1974) 10

Estelle v. Gamble, 429 U.S. 97 (1976) 5

Gentry v. Duckworth, 65 F.3d 555 (7th Cir. 1995) 6

Henderson v. Harris, 672 F. Supp. 1054 (N.D. Ill. 1987) 6

Hughes v. Noble, 295 F.2d 495 (5th Cir. 1961) 6

Jackson v. Duckworth, 955 F.2d 21 (7th Cir. 1992) 5, 6, 9, 10

James v. Milwaukee County, 956 F.2d 696 (7th Cir. 1992) 6

Kincaid v. Vail, 969 F.2d 594 (7th Cir. 1992), *cert. denied sub nom., Sceifers v. Vail*, 506 U.S. 1062 (1993) 10

Lunsford v. Bennett, 17 F.3d 1574 (7th Cir. 1994) 6

Meriwether v. Faulkner, 821 F.2d 408 (7th Cir. 1987) 5

Rhodes v. Chapman, 452 U.S. 337 (1981) 5

Sarsha v. Sears, Roebuck & Co., 3 F.3d 1035 (7th Cir. 1993) 8

TABLE OF AUTHORITIES – Continued

Page

Vance v. Peters, 97 F.3d 987 (7th Cir. 1996).....7, 9

Walton v. Fairman, 836 F. Supp. 511 (N.D. Ill. 1993) 6

West v. Rowe, 448 F. Supp. 58 (N.D. Ill. 1978) 7

Wilson v. Seiter, 501 U.S. 294 (1991) 10

Wilson v. Williams, 997 F.2d 348 (7th Cir. 1993) 5

U.S. CONSTITUTIONAL PROVISIONS

Eighth Amendment 2

Fourteenth Amendment 2

FEDERAL STATUTES

42 U.S.C. § 1983 ..... *passim*

PETITION FOR WRIT OF CERTIORARI

Jackie Vance respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on October 11, 1996 and December 18, 1996, for the compelling reason that the decisions represent a gross miscarriage of justice that erode Vance's constitutional rights as guaranteed by the Eighth and Fourteenth Amendments.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit which gives rise to this opinion is reprinted in Appendix hereto at page A-1. By order filed December 18, 1996, the Seventh Circuit denied Vance's timely-filed petition for rehearing. App. 23.

JURISDICTION

The United States District Court, Central District of Illinois, granted summary judgment against Vance on her civil rights action brought under 42 U.S.C. § 1983. App. 24. Vance timely appealed to the Seventh Circuit, which affirmed the lower court's order in an opinion filed October 11, 1996. App. 1. On December 18, 1996, the Seventh Circuit denied Vance's timely-filed motion for rehearing. App. 23. Pursuant to Supreme Court Rule 13.1, this petition has been filed within 90 days of the denial of rehearing.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States Constitution, Section One, provides:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The text of 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity,

or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

On April 13, 1993, Petitioner Jackie Vance ("Vance"), an inmate in the custody of the Illinois Department of Corrections, brought a civil rights action pursuant to 42 U.S.C. § 1983 in the United States District Court, Central District of Illinois, against Howard Peters ("Peters"), Director of Corrections, and Jane Higgins ("Higgins"), Warden of Dwight Correctional Center, for failure to provide medical treatment in violation of the Eighth and Fourteenth Amendments.

On June 3, 1993, the District Court granted Respondents Peters' and Higgins' motion for summary judgment on Petitioner's Eighth Amendment medical claim, finding that Peters and Higgins were not directly involved in any unconstitutional deprivation, despite Vance's uncontradicted deposition testimony that Higgins and Peters knew of the prison's failure to provide Vance with medical attention and their failure to act.

Vance timely appealed to the United States Court of Appeals for the Seventh Circuit, which affirmed the District Court's decision. The Seventh Circuit held that Vance had not established her burden of demonstrating that there is a genuine issue of triable fact that Higgins

and Peters were sufficiently informed of the unconstitutional deprivation to require their intervention. By order filed December 18, 1996, the Seventh Circuit denied Vance's timely-filed petition for rehearing.

REASON FOR GRANTING THE PETITION

SUMMARY JUDGMENT IS INAPPROPRIATE BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST

The grant of summary judgment in favor of Peters and Higgins was inappropriate because genuine issues of material fact exist regarding their knowledge of Vance's denial of medical treatment and their intent to impose cruel and unusual punishment upon Vance. Specifically, material issues of fact exist regarding whether Higgins and Peters received letters from Vance and her fellow inmates explaining Vance's denial of medical treatment and continued suffering and whether Higgins and Peters chose to ignore those letters so that Vance would be subjected to cruel and unusual punishment.

Summary judgment should be granted if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The evidence of the party opposing summary judgment is to be believed, and all justifiable inferences are to be drawn in the opposing party's favor. *Anderson*, 477 U.S. at 255. Moreover, credibility determinations, the weighing

of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. *Anderson*, 477 U.S. at 255.

Section 1983 provides a cause of action against governmental employees who, acting under color of state law, submit prison inmates to cruel and unusual punishment in violation of the Eighth Amendment. U.S. Const. amend. VIII. Cruel and unusual punishment under the Eighth Amendment includes deliberate indifference to a prisoner's serious medical needs. *Wilson v. Seiter*, 501 U.S. 294, 297 (1991); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). "[T]he denial of medical care is cruel and unusual because, in the worst case, it can result in physical torture, and, even in less serious cases, it can result in pain without any penological purpose." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981) (citing *Estelle*, 429 U.S. at 103). Therefore, the state has an obligation under the Eighth Amendment to provide an adequate medical care system to persons in its custody. *Meriwether v. Faulkner*, 821 F.2d 408, 411 (7th Cir. 1987), *cert. denied*, 484 U.S. 935 (1987).

Deliberate indifference to a prisoner's serious medical needs contains both an objective and a subjective component. The objective component is the character or nature of the act alleged to constitute cruel and unusual punishment. *Jackson v. Duckworth*, 955 F.2d 21, 22 (7th Cir. 1992). The objective component of an Eighth Amendment failure to provide medical treatment claim is not disputed; the denial for 13 days of medical care for a broken arm is considered cruel and unusual in contemporary society. *See Brown v. Hughes*, 894 F.2d 1533, 1538 (11th Cir. 1990), *cert. denied*, 496 U.S. 928 (1990) (deliberate indifferent delay of several hours in providing medical care

for painful broken foot sufficient to state Eighth Amendment claim); *Aldridge v. Montgomery*, 753 F.2d 970, 972-73 (11th Cir. 1985) (delay of two and one-half hours in treating bleeding cut under eye actionable under Eighth Amendment); *Hughes v. Noble*, 295 F.2d 495, 496 (5th Cir. 1961) (thirteen hour delay for broken and dislocated cervical vertebrae); *Henderson v. Harris*, 672 F. Supp. 1054, 1059 (N.D. Ill. 1987) (hemorrhoids constitute a serious medical condition).

The subjective component of an Eighth Amendment violation is the intent with which the act is committed. If a defendant had "actual knowledge of impending harm easily preventable," this satisfies the intent requirement. *James v. Milwaukee County*, 956 F.2d 696, 700 (7th Cir. 1992), *cert. denied*, 506 U.S. 818 (1992). A prison official's failure to act in such a situation suggests that the official desires the prisoner to suffer the harm. *Lunsford v. Bennett*, 17 F.3d 1574, 1580 (7th Cir. 1994); *Jackson v. Duckworth*, 955 F.2d 21, 22 (7th Cir. 1992).

Letters from a prisoner to officials can provide those officials with the requisite knowledge to constitute a Section 1983 violation. *See, e.g., Gentry v. Duckworth*, 65 F.3d 555 (7th Cir. 1995) (prison superintendent could reasonably be said to have known of a denial of scribe materials because of the prisoner's letters to him, and his inaction was at least deliberate indifference, if not actual denial); *Walton v. Fairman*, 836 F. Supp. 511 (N.D. Ill. 1993) (allowing case by pretrial detainees regarding deplorable conditions at Cook County Jail to proceed against Executive Director of Cook County Department of Corrections, Sheriff of Cook County and Superintendent, where plaintiffs sent letters and grievances to defendants informing

them of deplorable conditions of jail); *West v. Rowe*, 448 F. Supp. 58 (N.D. Ill. 1978) (suit allowed to proceed against Director of Illinois Department of Corrections where inmate sent Director letters requesting help to end threat to his life from other inmates).

Through letters sent by Vance and her fellow inmates, Tammy Fyke and Tammy Eveans, both Peters and Higgins had knowledge of Vance's serious and untreated medical condition; however, neither took action to prevent further harm to Vance. The District Court recognized that letters were written to Peters and Higgins, informing them of Vance's continued pain, suffering, and need for medical treatment, and acknowledged that neither Peters nor Higgins took action to get Vance the necessary medical treatment. Despite this evidence, the District Court granted summary judgment because it determined that such communications and knowledge could not establish the requisite intent for section 1983 liability. App. 29.

This misinterpretation of the law was corrected on appeal. Under some circumstances, such communications can convey actual knowledge of the harm to the officials; their subsequent inaction could then constitute a Section 1983 violation. *Vance v. Peters*, 97 F.3d 987, 993 (7th Cir. 1996). The Seventh Circuit nevertheless upheld the District Court's ruling. First, assessing Vance's credibility, the Seventh Circuit inappropriately questioned the existence of these letters. *Id.* at 994. Second, in improperly weighing the evidence and drawing inferences from it, the Seventh Circuit concluded that the communications had been insufficient to provide the defendants with the

requisite knowledge. *Id.* These conclusions on the credibility and sufficiency of the evidence of Vance's communications exceed the scope of the limited function of summary judgment.

Indeed, the nonmoving party must affirmatively demonstrate that a genuine factual dispute exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). Yet, a "nonmoving party's own affidavit or deposition will constitute affirmative evidence to defeat a summary judgment motion . . . even if it includes only bare denials." *Sarsha v. Sears, Roebuck & Co.*, 3 F.3d 1035, 1041 (7th Cir. 1993) (citations omitted).

Vance proffers such affirmative evidence in the form of her deposition, containing more than mere allegations or denials. Vance offers in her sworn testimony that she wrote Warden Higgins a letter before she received treatment, asking to see her and informing her of her broken arm. App. 32-33. Vance's letter apprised the warden of "the fight and everything," of her pain, of her need for medical attention, and of her lack of pain medication. App. 33. Vance testified that Fyke and Eveans also wrote letters to the warden and helped her write director Peters. App. 32-33.

This deposition testimony provides specific evidence of the letters and their contents. For purposes of summary judgment, this evidence is to be believed, and all reasonable inferences are to be drawn from it in the nonmovant's favor. However, the Seventh Circuit's opinion made credibility determinations and drew inferences from the evidence. The court asserted that Vance's testimony is "both vague and internally inconsistent,"

because Vance also testified that she was unable to complete a medical attention request form due to her broken arm. *Vance*, 97 F.3d at 994. However, this fact is not inconsistent with her other testimony. In recounting the events, Vance states that Fyke helped her write letters and states that "we" – Fyke and herself – wrote various people. App. 32-33. A justifiable inference from this testimony is that, because of her broken arm, Fyke helped Vance write the letters.

But regardless of the various reasonable interpretations of this testimony, summary judgment is not the forum for making such assessments. Adjudicating credibility of testimony and drawing inferences from the evidence is a jury's function. In undertaking this role, the Seventh Circuit usurped the jury's function and misapprehended the summary judgment process.

Contrary to the Seventh Circuit's opinion, Vance's testimony about the substance of those letters raises a genuine issue of material fact. As required by *Jackson v. Duckworth*, 955 F.2d at 22, the evidence shows that Vance's harm was ongoing (she had sent letters before receiving medical treatment), that the result was easily preventable (the timely provision of medical attention), and that the officials had actual knowledge because of her letters. Further, in testifying that she was placed in solitary after sending these letters, Vance proffers circumstantial evidence that the officials were aware of the situation. App. 33.

Whether the officials had actual knowledge of the situation from these letters is a question of state of mind. Such inquiries are not the proper province of summary

judgment. *Conrad v. Delta Airlines, Inc.*, 494 F.2d 914, 918 (7th Cir. 1974); *Kincaid v. Vail*, 969 F.2d 594, 602 (7th Cir. 1992), *cert denied sub nom., Sceifers v. Vail*, 506 U.S. 1062 (1993). A determination involving state of mind is rarely established by direct proof; rather, it is generally inferred from circumstantial evidence. *See Conrad*, 494 F.2d at 918.

At the District Court, Vance presented direct evidence of the letters and circumstantial evidence of subsequent, connected incidents. Petitioners provided no evidence to rebut, but even if their silence is presumed to be a denial, summary judgment is not a procedure for resolving swearing contests. *Jackson*, 955 F.2d at 22. Such determinations and inferences are granted to the jury and are not the function of the summary judgment process. *Wilson v. Williams*, 997 F.2d 348, 350 (7th Cir. 1993).

CONCLUSION

WHEREFORE, Petitioner Jackie Vance respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted:

JACKIE VANCE
One of her attorneys

DAVID B. MONTGOMERY
McDERMOTT, WILL & EMERY
227 West Monroe Street
Chicago, Illinois 60606-5096
(312) 372-2000

APPENDIX

10/11/96 Order of the United States Court of Appeals for the Seventh Circuit Affirming the District Court's Grant of Summary Judgment.....App. 1

12/18/96 Order of the United States Court of Appeals for the Seventh Circuit denying Vance's Motion for Rehearing...App. 23

06/03/93 Order of Judge Howard A. Baker granting in part and denying in part Defendant-Respondent's Motion for Summary Judgment.....App. 24

Excerpt from deposition transcript of Jackie Vance.....App. 31

Jackie VANCE, Plaintiff-Appellant,

v.

Howard PETERS, III, Director, Jane E. Higgins, Warden, and James Roy, Correctional Officer, Defendants-Appellees.

No. 94-3070.

United States Court of Appeals, Seventh Circuit.

Argued Feb. 14, 1996.

Decided Oct. 11, 1996.

Rehearing Denied Dec. 18, 1996.

Inmate filed § 1983 action against director of state Department of Corrections, prison warden, and corrections officer, alleging use of excessive force and deliberate indifference to serious medical needs from broken arm. The United States District Court for the Central District of Illinois, Harold Albert Baker, J., granted summary judgment in favor of officials and jury returned verdict for corrections officer. Appeal was taken. The Court of Appeals, Ripple, Circuit Judge, held that: (1) prison officials' knowledge of prison conditions learned from inmate's communications could, under appropriate circumstances, constitute sufficient knowledge to require action to investigate and, if necessary, to rectify offending condition; (2) warden and director could not be held liable under § 1983 for deliberate indifference to inmate's need for medical attention absent demonstration that officials were sufficiently informed of situation to require their intervention; and (3) district court did not abuse its discretion by excluding hearing officer's final report on officer's alleged use of excessive force as cumulative to

other evidence and because its probative value was outweighed by its prejudicial effect.

Judgment affirmed.

David B. Montgomery (argued), McDermott, Will & Emery, Chicago, IL, for Plaintiff-Appellant.

Patrick L. Breen, William K. Blanchard (argued), Office of the Attorney General, Civil Appeals Division, Chicago, IL, for Defendants-Appellees.

Before COFFEY, FLAUM and RIPPLE, Circuit Judges.

RIPPLE, Circuit Judge.

Jackie Vance, an inmate at Dwight Correctional Center ("Dwight"), brought suit under 42 U.S.C. § 1983 against three prison officials. She claimed that a prison guard used constitutionally excessive force to restrain her and that two prison officials acted with deliberate indifference to her serious medical needs, in violation of the Eighth Amendment of the Constitution of the United States. The district court granted summary judgment to the two prison officials on the ground that they were not involved directly or personally in the constitutional deprivations alleged in Ms. Vance's complaint. However, the court allowed the excessive force claim against the guard to proceed to trial. Following a two-day trial, the jury returned a verdict for the prison guard. Ms. Vance appeals both rulings. For the reasons set forth in the following opinion, we affirm the judgment of the district court.

I BACKGROUND

A. *Facts*

Jackie Vance is an inmate confined at the Dwight Correctional Center of the Illinois Department of Corrections. She filed her pro se complaint on August 6, 1991, claiming that her civil rights were violated by Howard Peters, the Director of the Illinois Department of Corrections; Jane Higgins, the Warden of Dwight; and James Roy, a correctional officer ("C.O.") at Dwight.[1]

1.

We turn first to the allegations in Ms. Vance's complaint. On the evening of December 27, 1990, Ms. Vance and Violetta Burgos, another inmate of the Mental Health Unit ("MHU") at Dwight, began fighting. C.O. Wilkerson intervened to stop the fight by grabbing Ms. Vance's left arm. Then C.O. Roy (a defendant in this case) grabbed her right arm and twisted it behind her back. Ms. Vance claimed that she "heard a crack and felt a surge of excruciating pain, as I felt my arm pop." R.6 at 3. When she yelled, "You broke my arm!", C.O. Roy replied that he would break her other arm. *Id.* at 3-4. Ms. Vance alleged that, afterwards, several officers kicked and pulled her as they took her back to her room.

---

[1] The court permitted Ms. Vance to amend her complaint to request $20,000 in damages for loss of partial strength in her right arm and for pain, suffering and mental anguish. R.17. The court also appointed an attorney to represent her. R.18.

Because her right arm continued to hurt, Ms. Vance complained to two officers, but to no avail. Later that evening, she slit her left wrist and was taken to St. Mary's Hospital for treatment. Her left wrist was treated, stated Ms. Vance, but the physician would not examine her right arm; instead, she was given Tylenol for it. When she was returned to Dwight, she was placed in segregation at the MHU.

Ms. Vance further alleged in her complaint that Nurse Pierce visited the MHU on January 7, 1991 to pass out medication. When she saw Ms. Vance's right arm, the nurse commented that the arm looked broken. She gave Ms. Vance some Tylenol and a sling. Two days later, x-rays taken in the prison hospital revealed the fracture. On that same day, Ms. Vance was taken to St. Mary's Hospital for a cast. According to the complaint, the bone specialist said that she would have future problems with that arm. Ms. Vance also noted in her complaint that Officer Roy was suspended for twenty days without pay for his wrongdoing.

2.

We turn now to the pretrial stage of the litigation in the district court. The court appointed an attorney to represent Ms. Vance. During discovery, depositions were taken and prison and hospital records were examined. When the defendants filed their motion for summary judgment, they submitted portions of Ms. Vance's deposition to justify their claims. That deposition revealed much more information about the fight and the circumstances surrounding Ms. Vance's broken arm.

Ms. Vance testified that Burgos had hit her in the stomach and that Ms. Vance had responded by jumping on her, knocking her down, falling down on top of her and hitting her. Ms. Vance also explained that she weighed 289 pounds and that Burgos weighed much less. When Officer Roy came in, Ms. Vance was "hollering and screaming" that Burgos was at fault for having hit her. R.26 at 42. Officer Roy grabbed her at that point. Ms. Vance tried to get loose when she thought her arm was broken, and she became more and more angry. A number of correctional officers (at least six) tried to return Ms. Vance to her room, but she fought them. She testified that they were pushing and kicking her through the door to her room and that C.O. Roy punched her in the face. Ms. Vance said she spit and swore at Officer Roy. At one point an officer put a handcuff on her left hand, and she "just went haywire" and lost control of her emotions. *Id.* at 59-60. Finally Ms. Vance was put in her room and the door was closed; however, she continued to scream and cry.

Ms. Vance testified that, about ten minutes after "everything happened," she cut her left arm lengthwise with a razor because she was angry and sad and no one would listen to her. Ms. Vance was then taken to the Dwight Clinic; at that point she said she "just wanted to die." *Id.* at 64. Officers Carr and Chavez came into the locked room to talk to her, but Ms. Vance felt that nobody cared about her. So she tried to blow up the oxygen tent in the room by lighting a match. Officer Carr jumped on her back when she struck the match; at some point, Ms. Vance punched Officer Chavez as well. Officer Carr told

Ms. Vance that he would get her some help at the hospital.

Ms. Vance was taken to St. Mary's Hospital later that evening to have her cut arm stitched. While at the hospital, she asked for pain medication and was given Tylenol. She testified that her right arm was x-rayed at the hospital. She was returned to the MHU in Dwight afterwards. After that evening, she continued to complain to anyone – guards, nurses and fellow inmates – who came by her room. At first she insisted that she could get no pain medication. However, she also commented that the nurses, who came by twice a day to give her seizure medication and other medicine previously prescribed for her, told her that they could not give her any other medicine without a doctor's order. She also remembered that she had been given a sling because "they say I probably [sprained] it and tore a ligament." *Id.* at 96.

Ms. Vance testified that she did not fill out a referral form to see a doctor about her right arm because she could not write with that hand. Instead, she told every officer and counselor about her pain and enlisted the help of two other inmates who sent letters to Warden Higgins and others, describing Ms. Vance's medical condition and requesting treatment. Ms. Vance further testified that she never talked to Warden Higgins but wrote a letter asking the warden to visit her because her arm was broken. She also wrote a letter to Director Peters because he was Warden Higgins' superior. However, that letter was not written during the period between December 27, 1990 and the time a cast was fitted on her arm.

Finally, on January 7, 1991, when Nurse Pierce went to see Ms. Vance in her cell, she gave Ms. Vance a splint and some pain medication and ordered x-rays for her arm. Two days later the x-rays were taken at St. Mary's Hospital, the fracture discovered, and the arm treated. Ms. Vance's assertion is that, despite repeated requests for medical attention, it was not until thirteen days after Officer Roy broke Ms. Vance's arm that the prison finally provided her with the medical treatment that she obviously needed.

B. *Proceedings in the District Court*

On June 3, 1993, the district court issued its ruling on defendants' summary judgment motions. The court noted that defendant C.O. Roy, one of at least six officers who quelled the altercation between the plaintiff and her fellow inmate Burgos, broke the plaintiff's arm. However, it also acknowledged that material facts concerning the circumstances of that injury remained in dispute. The court therefore concluded that, because the intentional and unjustifiable use of force against an inmate constituted cruel and unusual punishment, Ms. Vance's claim against C.O. Roy must proceed to trial to determine whether the force he used was a good faith effort to restore discipline or a malicious effort to cause harm.

With respect to the plaintiff's Eighth Amendment medical mistreatment claim, however, the court set forth the deliberate indifference standard of *Hudson v. McMillian*, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992) and *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) and granted summary judgment to all

three defendants. It noted that Ms. Vance had conceded that C.O. Roy should not be charged with denial or delay of medical treatment. It further determined that the record did not support a cause of action against the other two defendants. According to the court, although the case had reached the summary judgment stage, Ms. Vance had alleged no facts showing that either Director Peters or Warden Higgins was involved directly or personally in any medical deprivation. Nor had the plaintiff shown that treatment was withheld at the direction of or with the knowledge or consent of those defendants. The court concluded that neither official was liable as a supervisor for the acts of others because the doctrine of *respondeat superior* does not apply to actions under 42 U.S.C. § 1983. Nor, continued the court, is either official personally liable because Ms. Vance's allegation that Peters and Higgins had failed to respond to her letters notifying them of the lack of medical treatment for her broken arm did not state a § 1983 cause of action.

> The defendants undoubtedly receive many such letters every day, and a check would have revealed that the plaintiff already had received attention [albeit apparently unsatisfactory attention] at an outside hospital. Supervisory officials cannot be expected to involve themselves with the "minutiae of daily events in the lives of the thousands of prisoners incarcerated in Illinois prisons."

R.28 at 6 (quoting *Hanna v. Lane*, 610 F.Supp. 32, 36 (N.D.Ill.1985)). Had the officials become involved, the court noted, they would have discovered that Ms. Vance had been treated at a hospital. Expressing regret about the inferior care given to Ms. Vance that evening and

about the ten-day delay in follow-up care, the court nevertheless held that there was no basis for liability on the part of the defendants because there was no showing that they were personally involved in the alleged denial of medical treatment. On that basis, the district court granted summary judgment for the defendants on the medical treatment claim and denied summary judgment on the excessive force claim against C.O. Roy.[2]

The case proceeded to trial on Ms. Vance's claim that C.O. Roy used unconstitutionally excessive force against her. After a two-day trial, the jury found for the defendant Officer Roy.

---

[2] The district court did not consider the defendants' affirmative defense of immunity. We too decide the case on the ground that the plaintiff fails on her Eighth Amendment claim, without regard to immunity. *See Dell v. Board of Education*, 32 F.3d 1053, 1066 n. 28 (7th Cir.1994) (listing cases in which § 1983 actions are decided on other grounds without regard to immunity). We note in passing that, when the complaint is read as a whole, it is clear that the claim for damages is brought against the defendants in their individual capacities. *Kentucky v. Graham*, 473 U.S. 159, 165-66, 105 S.Ct. 3099, 3104-05, 87 L.Ed.2d 114 (1985); *Brandon v. Holt*, 469 U.S. 464, 471-72, 105 S.Ct. 873, 877-78, 83 L.Ed.2d 878 (1985); *Yeksigian v. Nappi*, 900 F.2d 101, 103-04 (7th Cir.1990). It is well established, of course, that any claim for damages under 42 U.S.C. § 1983 against state officials in their official capacities must be dismissed as barred by the Eleventh Amendment. *Billman v. Indiana Dep't of Corrections*, 56 F.3d 785, 788 (7th Cir.1995).

II DISCUSSION

We begin by considering Ms. Vance's appeal of the summary judgment ruling. We review de novo the district court's grant of summary judgment, viewing the record and drawing all reasonable inferences from it in the light most favorable to Ms. Vance, the nonmoving party. *Wade v. Byles*, 83 F.3d 902, 904 (7th Cir.), *cert. denied*, ___ U.S. ___, 117 S.Ct. 311, ___ L.Ed.2d ___ (1996). We shall affirm a summary judgment if the pleadings, depositions and affidavits show that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986); *Stratmeyer v. United States*, 67 F.3d 1340, 1345 (7th Cir.1995). The moving party has the burden of establishing an absence of a genuine issue of material fact. *Anderson v. Liberty Lobby*, 477 U.S. 242, 256, 106 S.Ct. 2505, 2514, 91 L.Ed.2d 202 (1986). However, the party opposing the motion for summary judgment may not rest on the allegations in her pleadings; she must come forward with evidence of a genuine factual dispute. *Id.* A genuine issue of material fact exists if there is sufficient evidence for a jury to return a verdict in favor of the nonmovant, Ms. Vance. *Anderson*, 477 U.S. at 249, 106 S.Ct. at 2510-11; *see Smith v. Shawnee Library Sys.*, 60 F.3d 317, 320 (7th Cir.1995).

A.

Ms. Vance first submits on appeal that material issues of fact, precluding summary judgment, exist. She claims that the denial of medical treatment for thirteen days to a

prisoner with a broken arm is objectively cruel and unusual treatment. She points out that defendants Warden Higgins and Director Peters have not denied knowledge of Ms. Vance's serious medical condition and of her failure to receive appropriate attention. She further asserts that there is a material issue of fact concerning the intent of Peters and Higgins, who were made aware of her condition through letters written by herself and two other inmates and yet failed to provide her medical treatment. Ms. Vance's position is that the officials' failure to act, once they had knowledge, suggests that those officials desired the prisoner to suffer harm.

B.

When considering whether the defendants are subject to § 1983 liability, we follow our long-settled rule: "Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation." *Sheik-Abdi v. McClellan*, 37 F.3d 1240, 1248 (7th Cir.1994) (citing *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir.1983)), *cert. denied*, ___ U.S. ___, 115 S.Ct. 937, 130 L.Ed.2d 882 (1995).

The constitutional deprivation alleged in this case is an Eighth Amendment violation. The Eighth Amendment to the Constitution of the United States proscribes the infliction of "cruel and unusual punishments." The amendment imposes upon prison officials the duty to "provide humane conditions of confinement," *Farmer v. Brennan*, 511 U.S. 825, ___, 114 S.Ct. 1970, 1976, 128 L.Ed.2d 811 (1994), including the obligation to provide

medical care to those whom it has incarcerated, *Estelle v. Gamble*, 429 U.S. 97, 103-04, 97 S.Ct. 285, 290-91, 50 L.Ed.2d 251 (1976). A prisoner raising an Eighth Amendment claim against a prison official therefore must satisfy two requirements. The first one is an objective standard: "[T]he deprivation alleged must be, objectively, 'sufficiently serious.' " *Farmer*, 511 U.S. at ___, 114 S.Ct. at 1977. As the Court explained in *Farmer*, "a prison official's act or omission must result in the denial of the minimal civilized measure of life's necessities." *Id.* The second requirement is a subjective one: "[A] prison official must have a 'sufficiently culpable state of mind,' " one that the Court has defined as "deliberate indifference." *Id; see Hudson v. McMillian*, 503 U.S. 1, 5, 112 S.Ct. 995, 998, 117 L.Ed.2d 156 (1992) ("[T]he appropriate inquiry when an inmate alleges that prison officials failed to attend to serious medical needs is whether the officials exhibited 'deliberate indifference.' "); *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251 (1976) ("[D]eliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain.' "). In *Farmer*,the Supreme Court refined the *Estelle* and *Hudson* definitions of "deliberate indifference." The Court cast aside the objective test of negligence and adopted, instead, the standard of "subjective recklessness" used in the criminal law:

> We reject petitioner's invitation to adopt an objective test for deliberate indifference. We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or

> safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Farmer, 511 U.S. at ___, 114 S.Ct. at 1979. However, the Court stressed that this test is not an insurmountable hurdle for inmates raising Eighth Amendment claims:

> [A]n Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. . . . Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, . . . and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.

Id. at ___, 114 S.Ct. at 1981.

Our circuit's decisions following this standard for deliberate indifference in the denial or delay of medical care require evidence of a defendant's actual knowledge of, or reckless disregard for, a substantial risk of harm. They also recognize that a defendant's inadvertent error, negligence or even ordinary malpractice is insufficient to rise to the level of an Eighth Amendment constitutional violation.

> "Neglect of a prisoner's health becomes a violation of the Eighth Amendment only if the prison official named as defendant is deliberately indifferent to the prisoner's health – that is, only if

> he 'knows of and disregards an excessive risk to inmate health or safety.' "

Williams v. O'Leary, 55 F.3d 320, 324 (7th Cir.) (quoting *Sellers v. Henman*, 41 F.3d 1100, 1102 (7th Cir.1994) (quoting, in turn, *Farmer*, 511 U.S. at ___, 114 S.Ct. at 1979)), *cert. denied*, ___ U.S. ___, 116 S.Ct. 527, 133 L.Ed.2d 434 (1995); *see also Steele v. Choi*, 82 F.3d 175, 179 (7th Cir.1996) (concluding there was insufficient evidence of doctor's knowledge of serious medical risk or of his deliberate indifference to that risk; emphasizing that even malpractice is not enough proof under *Farmer*), *cert. denied*, ___ U.S. ___, 117 S.Ct. 244, ___ L.Ed.2d ___ (1996); *Miller v. Neathery*, 52 F.3d 634, 638-39 (7th Cir.1995) (applying *Farmer* mandate in jury instruction). However, a plaintiff inmate need not prove that a defendant *intended* the harm that ultimately transpired or *believed* the harm would occur. *Haley v. Gross*, 86 F.3d 630, 641 (7th Cir.1996).

C.

With these principles of law in mind, we now examine Ms. Vance's allegation that the named defendants violated her rights under the Eighth Amendment by the delay of thirteen days in setting her broken arm. The focus must be on whether any of the defendants had the personal involvement necessary to permit a finding of liability.

At the outset, we emphasize that Ms. Vance has chosen to bring this action against only three defendants, none of whom was involved directly in the treatment of her injury. With respect to Officer Roy, Ms. Vance conceded in the district court that he had no responsibility

for her medical care. She makes no argument on this matter before us. The other two defendants, Director Peters and Warden Higgins, were not directly involved in the procurement of her medical care. As we have noted previously, a supervising prison official cannot incur § 1983 liability unless that officer is shown to be personally responsible for a deprivation of a constitutional right. *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir.1995); *Sheik-Abdi*, 37 F.3d at 1248; *see also Jones v. Chicago*, 856 F.2d 985, 992 (7th Cir.1988) (noting that "supervisors who are merely negligent in failing to detect and prevent subordinates' misconduct are not liable"). The test for establishing personal responsibility was set forth in *Gentry*:

> Of course, [the defendant prison official] cannot be personally liable under a theory of respondeat superior. However, " '[a]n official satisfies the personal responsibility requirement of section 1983 . . . if the conduct causing the constitutional deprivation occurs at [his] direction or with [his] knowledge and consent.' " That is, he "must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye. . . . " In short, some causal connection or affirmative link between the action complained about and the official sued is necessary for § 1983 recovery.

Gentry, 65 F.3d at 561 (citations omitted). In *Gentry*,the inmate claimed that his right of access to the courts was violated because he was denied scribe materials. He sent the superintendent many letters concerning his claims; they went unanswered. This court determined, upon examination of the pleadings in that particular case, that it was a reasonable construction of the inmate's pled facts to conclude that the superintendent knew of the denial of

scribe materials because of the prisoner's "many letters" to him, and that, as a matter of policy, the superintendent had ignored these requests for redress. *Id.*

Gentry thus allows the possibility that an inmate's letters to prison administrators may establish a basis for § 1983 liability. However, we do not read *Gentry* as establishing an ironclad rule that any prisoner communication to a prison official anywhere in the corrections hierarchy constitutes adequate notice to the official of a violation of the Eighth Amendment. The plaintiff still has the burden of demonstrating that the communication, in its content and manner of transmission, gave the prison official sufficient notice to alert him or her to "an excessive risk to inmate health or safety," *Farmer*, 511 U.S. at ___, 114 S.Ct. at 1979. Once the official knows of that risk, the refusal or declination to exercise the authority of his or her office may reflect deliberate disregard.

We now turn to an application of these principles in the case before us. We begin with Ms. Vance's complaint. It makes no allegation concerning Higgins and Peters: no claim of personal involvement on their part, of any connection by them to the lack of medical attention, or of any notice by Ms. Vance or others of the lack of treatment. The district court, however, did not ground its decision in the failing of Ms. Vance's complaint to raise any allegation against Higgins or Peters. Instead, it proceeded to evaluate the substance of Ms. Vance's claim on summary judgment. We therefore shall extend the same leniency to this pro se complaint and evaluate Ms. Vance's complaint on the same basis as did the district court. *Antonelli v. Sheahan*, 81 F.3d 1422, 1428 (7th Cir.1996) (stating that pro se complaints are interpreted less stringently). However,

even when we read her complaint and summary judgment responses generously and in the light most favorable to her, Ms. Vance has not presented sufficient evidence of the involvement of these prison officials in the delay in Ms. Vance's treatment. Her claim of their personal liability under § 1983 is based solely on the letters she and two inmates sent and the nonresponse by Peters and Higgins.

The district court concluded that the officials' failure to respond to her letters simply did not state a § 1983 cause of action. It commented that the officials "cannot be expected to involve themselves with the 'minutiae of daily events in the lives of the thousands of prisoners incarcerated in Illinois prisons.' " R.28 at 6 (quoting *Hanna v. Lane*, 610 F.Supp. 32, 36 (N.D.Ill.1985)). After *Gentry*,it is clear that the district court's statement sweeps too broadly. As we have noted earlier, a prison official's knowledge of prison conditions learned from an inmate's communications can, under some circumstances, constitute sufficient knowledge of the conditions to require the officer to exercise his or her authority and to take the needed action to investigate and, if necessary, to rectify the offending condition. *See Antonelli*, 81 F.3d at 1428. Ms. Vance thus needed to offer some record evidence that, because of the purported letters, the defendant officials knew of a constitutional deprivation and approved it, turned a blind eye to it, failed to remedy it, or in some way personally participated. *Gentry*, 65 F.3d at 561.

When we examine the record upon summary judgment in its entirety, it becomes clear that Ms. Vance has not carried her burden of demonstrating that there is a

genuine issue of triable fact with respect to the knowledge of either of these officials. *See Anderson*, 477 U.S. at 248-49, 106 S.Ct. at 2510-11 (stating that the party opposing the motion for summary judgment is required to present evidence of a genuine issue of material fact, not mere allegations, and that the evidence must be sufficient for a jury to return a verdict in that party's favor).

At her deposition, Ms. Vance testified that she did not fill out a prison request form asking for medical treatment because her arm was broken and she could not write. She also stated that she had informed correctional officers with whom she had contact during that period that she needed medical assistance. With respect to the named defendants, she stated that she wrote to the warden and asked her to see her because she had a broken arm. She also had two other inmates write on her behalf. She further asserts that, when the warden realized that she had one of the other inmates write for her, she was moved to isolation. With respect to Director Peters, Ms. Vance testified that she wrote to him. However, she also testified that neither she nor anyone on her behalf communicated with him during the period between her injury and January 9 when she was given a splint.

With respect to Warden Higgins, her submission is both vague and internally inconsistent. She claims to have written to the warden but also claims that, during the same period, she was unable to use her arm to fill out a routine request for medical attention.[3] More importantly, she does not supply, in her description of the

---

[3] We note that Ms. Vance did not utilize any available prison grievance procedure against Peters or Higgins. However,

purported letter, any detail to permit the conclusion that the letter sufficiently advised the warden of the situation to require her intervention.

The lapses in her own testimony are not cured by other evidentiary submissions. There is no corroborative evidence with respect to the letters that Ms. Vance says that she sent to the defendant officials. She had no copy of a letter and no letter was produced from any other source. One of the prisoners who allegedly wrote on her behalf, Tammy Fyke, gave a deposition; however, Ms. Vance's counsel never asked her whether she wrote such a letter. Tammy Evans, the other inmate who was named by Ms. Vance, never gave a deposition. No letter was produced. The warden was not deposed. Under these circumstances, we cannot say that there is sufficient evidence to permit a jury to determine that the warden was sufficiently alerted of a lapse in Ms. Vance's treatment as to require her intervention or further investigation. With respect to Director Peters, Ms. Vance's admission that neither she nor any one else wrote during that period on her behalf bars any relief on her behalf.

On the basis of the evidence in the summary judgment record, we must conclude that Ms. Vance did not meet her burden of establishing that the prison officials

---

she did institute a proceeding against C.O. Roy; thus she knew the proper procedure to follow. We need not decide in this case whether a prisoner's personal communication to a prison official that circumvents the use of an established and effective grievance procedure is sufficient to put the prison official on notice of a prisoner's complaint with respect to conditions that ought to be reported through the grievance system.

named as defendants were sufficiently informed of the situation to require their intervention. Accordingly, we hold that the district court properly ruled that the three defendants were entitled to summary judgment.

D.

The second issue Ms. Vance appeals concerns an evidentiary ruling made by the district court in the trial of the excessive force allegation against C.O. Roy. She contends that the district court abused its discretion by refusing to admit an exhibit she had proffered. The exhibit in question was the memorandum to Warden Higgins from the Employee Review Officer in the Illinois Department of Corrections. That officer had conducted a hearing concerning Officer Roy's conduct in the incident that resulted in Ms. Vance's broken arm. The hearing officer had concluded that Officer Roy had used excessive force on Ms. Vance and had recommended a twenty-day suspension. The memorandum was signed by the warden, indicating her agreement with the hearing officer's conclusion.

The district court ruled that the exhibit was admissible under Rule 803(6) of the Federal Rules of Evidence, as a "record of a regularly conducted activity," but it excluded the document under Rule 403 because it was cumulative and because the probative value was outweighed by its prejudicial effect. The court already had admitted the documents that had been considered by the hearing officer: the interviews, hospital and clinic records and other information collected by prison investigators, and the investigators' reports and conclusions that C.O.

Roy used excessive force. In deciding not to admit the report, the court expressed concern that the jury would "give inordinate weight to the conclusion or the decision reached by the hearing officer," and that the chance of prejudice therefore outweighed the probative value of the submission. R.56 at 184.

Ms. Vance claims that the report would have demonstrated to the jury that the force C.O. Roy used on Ms. Vance was excessive by the prison's own standards. She also asserts that the exhibit was not cumulative because her other exhibits did not indicate Warden Higgins' concurrence in the findings of excessive force.

We review a trial court's rulings concerning admissibility of evidence only for an abuse of that court's discretion. *United States v. Thomas,* 86 F.3d 647, 652 (7th Cir.1996); *United States v. Wiman,* 77 F.3d 981, 984 (7th Cir.1996).

> With respect to Rule 403 determinations, we have noted that the district court, "who saw and heard the evidence firsthand, can best balance probity and prejudice." Thus, the defendants bear a heavy burden in challenging the trial court's decision to admit evidence under Rule 403.

Thomas, 86 F.3d at 652.

We believe that the district court exercised sound judgment in its ruling. There is no basis for reversal. The court's earlier decision to admit the evidence that had been considered by the hearing officer permitted the jury to weigh on its own the available evidence. The exclusion of the hearing officer's final report ensured that the jury

reached its own conclusion with respect to the ultimate issue without giving inordinate weight to that officer's conclusion. The hearing officer's decision that C.O. Roy used excessive force was based on the standards set forth in the prison's internal rules or policies, not on Eighth Amendment criteria. *See, e.g., McGill v. Duckworth,* 944 F.2d 344, 350 (7th Cir.1991) (noting distinction between an officer's violation of a prison rule and of an Eighth Amendment requirement), *cert. denied,* 503 U.S. 907, 112 S.Ct. 1265, 117 L.Ed.2d 493 (1992).

Conclusion

For the reasons presented above, we affirm the judgment of the district court.

AFFIRMED.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

December 18, 1996.

Before

Hon. JOHN L. COFFEY, Circuit Judge

Hon. JOEL M. FLAUM, Circuit Judge

Hon. KENNETH F. RIPPLE, Circuit Judge

JACKIE VANCE, Plaintiff-Appellant, v. No. 94-3070 HOWARD PETERS, III, Director JANE E. HIGGINS, Warden, and JAMES ROY, Correctional Officer, Dwight Correctional Center, Defendants-Appellees.	]]]]]]]]]]]]	Appeal from the United States District Court for the Central District of Illinois, Danville Division. No. 91 c 2285 Harold A. Baker, Judge.

ORDER

On consideration of the petition for rehearing filed by the plaintiff-appellant on October 25, 1996, the judges on the panel have voted to deny the petition. Accordingly,

IT IS ORDERED that the petition for rehearing be, and the same is hereby, DENIED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

JACKIE VANCE,	)	
Plaintiff,	)	
vs.	)	No. 91-2285
HOWARD PETERS, et al.,	)	
Defendants.	)	

ORDER

(Filed June 3, 1993)

The plaintiff, a state prisoner, has brought this civil rights action pursuant to 42 U.S.C. § 1983. The plaintiff claims that the defendants, various Dwight Correctional Center officials, violated the plaintiff's constitutional rights by using excessive force against her and by denying her medical care. This matter is before the court for consideration of the defendants' motion for summary judgment. For the reasons stated in this order, the motion will be allowed only in part.

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Herman v. National Broadcasting Co., Inc.*, 744 F.2d 604, 607 (7th Cir. 1984), *cert. denied*, 470 U.S. 1028 (1985). "[I]n determining whether factual issues exist, a reviewing court must view all the evidence in the light most favorable to the non-moving

party." *Black v. Henry Pratt Co.*, 778 F.2d 1278, 1281 (7th Cir. 1985).

However, Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party there is no 'genuine' issue for trial." *Mechnig v. Sears, Roebuck & Co.*, 864 F.2d 1359 (7th Cir. 1988).

FACTS

The plaintiff is a state prisoner, confined at the Dwight Correctional Center at all times relevant to this action. The defendant Jane Higgins is the prison's warden. The defendant James Roy is a correctional officer at the institution. The defendant Howard Peters is the Director of the Department of Corrections.

The following facts are uncontested: On December 27, 1990, the plaintiff had an altercation with a fellow inmate. At least six correctional officers responded to the incident, separating the inmates and holding them apart. In the process of quelling the disturbance, the defendant Roy broke the plaintiff's arm at some point.

However, material facts remain in dispute regarding the precise circumstances of the injury. The defendants maintain that the plaintiff was in a "violent and combative" state when Roy arrived at the scene, resisting his

efforts to restore order. According to the plaintiff, however, the other officers had already placed her under control by the time Roy grabbed her. The plaintiff further maintains that Roy punched and kicked her after the subdued plaintiff had been led to her cell. As additional evidence of wrongdoing, the plaintiff notes that Roy was suspended for twenty days as a result of the incident.

The night of the altercation, the plaintiff was taken to an outside hospital for medical care. The treating physician administered only to a wound on the plaintiff's left arm. The doctor did not examine the plaintiff's right arm, simply telling her to take Tylenol for the pain.

Following her return to the prison segregation unit, the plaintiff demanded additional medical attention numerous times. The plaintiff submitted a formal request to see a doctor and complained to various correctional officials [all non-defendants] about the pain in her arm. When her requests went ignored, the plaintiff (and other inmates on her behalf) wrote several letters to the defendant Higgins and Peters. The plaintiff did not receive appropriate treatment until ten days later, when a doctor finally examined her and x-rays revealed that her arm had, in fact, been broken.

DISCUSSION

Summary judgment will be denied as to the plaintiff's claim against Roy. A jury must determine whether Roy used constitutionally excessive force in attempting to restore order, or whether he sadistically applied force after order already had been restored. However, the defendants' motion will be granted with respect to the

plaintiff's Eighth Amendment medical claim. Even viewing the record in the light most favorable to the plaintiff, the court discerns no cause of action against the named defendants.

The plaintiff's use-of-force claim must proceed to trial. The intentional use of excessive force against an inmate, without penological justification, constitutes cruel and unusual punishment violative of the Eighth Amendment and actionable under 42 U.S.C. § 1983. *Hudson v. McMillian,* 112 S.Ct. 995 (1992); *Williams v. Boles,* 841 F.2d 181 (7th Cir. 1988). Although not every malevolent touch by a prison guard gives rise to a federal cause of action, an inmate need not establish serious bodily injury to make a claim. A defendant may be held liable for the use of force "of a sort repugnant to the conscience of mankind." *Hudson,* 112 S.Ct. at 1000.

In the case at bar, there is a triable issue over the facts, as well as over how Roy's actions should be characterized. "[W]henever prison officials stand accused of using excessive physical force in violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Id.* at 999. Here, a trier of fact must determine whether Roy used reasonable force, or whether his actions exceeded constitutional strictures.

However, judgment will be granted in favor of the defendants on the plaintiff's medical claim. In order for a prison inmate to prevail under 42 U.S.C. § 1983 on a claim of medical mistreatment, the inmate must allege "acts or omissions sufficiently harmful to evidence deliberate

indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). The standard of deliberate indifference was recently reaffirmed in *Hudson v. McMillian*, 112 S.Ct. 995, 1000 (1992) ("society does not expect that prisoners will have unqualified access to health care"); *see also Wilson v. Seiter*, 111 S.Ct. 2321 (1991). The indifference to medical needs must be substantial; inadequate treatment due to negligence, inadvertence or differences in judgment between an inmate and medical personnel do not rise to the level of constitutional violations. *Estelle; Hughes v. Joliet Correctional Center*, 931 F.2d 425, 428 (7th Cir. 1991).

The plaintiff concedes that Roy "should not be a defendant to the separate claims that the plaintiff was denied medical attention after her arm was broken." The court, moreover, finds that the record does not support a cause of action against the defendants Peters and Higgins. Although this case has reached the summary judgment stage, the plaintiff has alleged no facts establishing those individuals' direct, personal involvement, as required by *Duncan v. Duckworth*, 644 F.2d 653, 655 (7th Cir. 1981). Nor has the plaintiff shown that the alleged violation of her constitutional rights occurred at those defendants' direction or with their knowledge and consent. *See Crowder v. Lash*, 687 F.2d 996, 1005 (7th Cir. 1982).

The mere fact that Peters is the Director of the Department of Corrections and that Higgins is the warden at Dwight is insufficient grounds for liability. The doctrine of *respondeat superior* (supervisory liability) does not apply to actions filed under 42 U.S.C. § 1983. *See Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983); *Adams v. Pate*, 445 F.2d 105 (7th Cir. 1972).

The defendants' failure to respond to the plaintiff's letters does not state a cause of action under 42 U.S.C. § 1983. *See Hanna v. Lane*, 610 F.Supp. 32, 36 (N.D. Ill. 1985); *Partee v. Lane*, 528 F.Supp. 1254, 1259 (N.D. Ill. 1981). The defendants undoubtedly receive many such letters every day, and a check would have revealed that the plaintiff already had received attention [albeit apparently unsatisfactory attention] at an outside hospital. Supervisory officials cannot be expected to involve themselves with the "minutiae of daily events in the lives of the thousands of prisoners incarcerated in Illinois prisons." *Hanna* at 36.

In short, it is regrettable and unfortunate that the plaintiff received inferior hospital care the night of her prison brawl; likewise, the court is disturbed by the ten-day delay in follow-up care after the plaintiff returned to Dwight. However, the plaintiff has not established a basis for liability on the part of any of the named defendants.[1] Because the plaintiff has failed to show that the defendants were personally involved in the alleged denial of treatment for the plaintiff's broken arm, judgment will be granted in favor of the defendants on the plaintiff's medical claim.

---

[1] The plaintiff asserts that there is "systematic deprivation" of proper medical treatment at Dwight; she further claims that inmates are punished for complaining about the level of medical care. However, the plaintiff made no such allegation in her complaint, and provides no facts whatsoever to support her conclusory charges of an "official policy" of deliberate indifference. The plaintiff's unsupported claims are insufficient to defeat summary judgment.

In conclusion, summary judgment will be denied as to the plaintiffs Eighth Amendment use-of-force claim against the defendant Roy. However, summary judgment will be granted in favor of the defendants on the plaintiff's Eighth Amendment medical claim.

IT IS THEREFORE ORDERED that the defendants' motion for summary judgment (docket #26) is allowed in part and denied in part. Summary judgment is granted in favor of the defendants only on the plaintiff's Eighth Amendment medical claim. At the close of the case, the Clerk of the court shall enter judgment in favor of the defendants Peters and Higgins and against the plaintiff pursuant to Fed. R. Civ. P. 56. The plaintiff will be allowed to proceed on her claim that the defendant Roy used constitutionally excessive force against her.

Enter this 3rd day of June, 1993.

/s/ Harold A. Baker
HAROLD A. BAKER
UNITED STATES
DISTRICT JUDGE

[p. 75] A. I told every CO that was on them days at MH2. I said – told every counselor that was at MH2. The warden wouldn't even come. I had inmates writing for me, Tammy Fyke, Tammy Evans. As soon as the warden had found out that Tammy Fyke was helping me, they moved me to C15 where I couldn't get no help.

Q. When was that?

A. Right after they found out my arm was broken and put it in a cast. It was in January, I would say around about January the 19th, or wasn't too many days that I came back with a cast on my arm, because I was scared they are going to take my paper and stuff with the cast on there. The paper did get taken. They – you don't know, you don't know, but – I know you working for them, but you know right is right and wrong is wrong, sir.

Q. I have no argument with you there.

A. God is looking down on everything, he got the last say-so when it's all over. He didn't have to break my arm.

Q. Did you ever – after December 27th, 1990, did you ever – did you see Officer Roy after that?

A. I'm in fear of him. I fear that man.

Q. Did you see him?

* * *

[p. 89] you had your cast put on in January of 1991?

A. Sir, I'm not being smart, it's just like you, if you didn't come here today and we all went to court, I

couldn't have never talked to you because you didn't show up, but you are aware of everything that happened.

Q. Okay. But the question is, did you ever talk to Warden Higgins?

A. I wrote Warden Higgins a letter. She didn't come, no, sir.

Q. Okay. The question was, did you ever talk to her face-to-face?

A. No, sir.

Q. Okay. You said you wrote a letter?

A. I wrote her a –

Q. One letter?

A. I wrote her a letter, would she please come and see about me, my arm is broke.

Q. And when did you write that letter?

A. I wrote that letter when my arm was broke before I even got any medical attention.

Q. Do you still have a copy of that letter?

A. No, I don't. I wrote Warden Higgins, I wrote the nurses, staff, Monica Becker, I had Tammy [p. 90] Fyke did this for me, and we wrote the director of Springfield.

Q. Is that Howard Peters?

A. I don't know who he is now. We wrote somebody and he came down here with a badge.

Q. What was in the letter to Warden Higgins?

A. Letting her know that everything that happened in the fight and everything where my arm is broken and I don't get no medical attention, no pain medicine, I'm laying over here in pain.

Q. Okay.

A. Would she –

Q. How did you send that letter?

A. Through the mailbox, give it to the CO.

Q. Who wrote that letter for you?

A. I guess Tammy Evans help me do all my mail and Tammy Fyke until they caught – the CO over there caught up with them and he cancelled and moved me to C15, put me in a room with a hole built like that where no one can help me, where no one in it to help me with no legal work.

Q. Okay. You have – you have named Howard Peters as a defendant in this case.

A. He is Warden Higgins' boss, isn't he?